

Therefore, when the IRS employee contacts the ex-wife's new employer to verify salary information provided by the ex-wife, the IRS employee has good cause not to report that contact to the ex-husband, regardless of whether the new employer expresses concern about reprisal against it or its employees.

(4) *Pending criminal investigations*—(i) *IRS criminal investigations.* Section 7602(c) does not apply to contacts made during an investigation, or inquiry to determine whether to open an investigation, when the investigation or inquiry is—

(A) Made against a particular, identified taxpayer for the primary purpose of evaluating the potential for criminal prosecution of that taxpayer; and

(B) Made by an IRS employee whose primary duties include either identifying or investigating criminal violations of the law.

(ii) *Other criminal investigations.* Section 7602(c) does not apply to contacts which, if reported to the taxpayer, could interfere with a known pending criminal investigation being conducted by law enforcement personnel of any local, state, Federal, foreign or other governmental entity.

(5) *Governmental entities.* Section 7602(c) does not apply to any contact with any office of any local, state, Federal or foreign governmental entity except for contacts concerning the taxpayer's business with the government office contacted, such as the taxpayer's contracts with or employment by the office. The term *office* includes any agent or contractor of the office acting in such capacity.

(6) *Confidential informants.* Section 7602(c) does not apply when the employee making the contact has good cause to believe that providing either the pre-contact notice or the record of the person contacted would identify a confidential informant whose identity would be protected under section 6103(h)(4).

(7) *Nonadministrative contacts*—(i) *Explanation.* Section 7602(c) does not apply to contacts made in the course of a pending court proceeding.

(ii) *Examples.* The following examples illustrate this paragraph (f)(7):

*Example 1.* An attorney for the Office of Chief Counsel needs to contact a potential witness for an upcoming Tax Court pro-

ceeding involving the 1997 and 1998 taxable years of the taxpayer. Section 7602(c) does not apply because the contact is being made in the course of a pending court proceeding.

*Example 2.* While a Tax Court case is pending with respect to a taxpayer's 1997 and 1998 income tax liabilities, a revenue agent is conducting an examination of the taxpayer's excise tax liabilities for the fiscal year ending 1999. Any third-party contacts made by the revenue agent with respect to the excise tax liabilities would be subject to the requirements of section 7602(c) because the Tax Court proceeding does not involve the excise tax liabilities.

*Example 3.* A taxpayer files a Chapter 7 bankruptcy petition and receives a discharge. A revenue officer contacts a third party in order to determine whether the taxpayer has any exempt assets against which the IRS may take collection action to enforce its federal tax lien. At the time of the contact, the bankruptcy case has not been closed. Although the bankruptcy proceeding remains pending, the purpose of this contact relates to potential collection action by the IRS, a matter not before or related to the bankruptcy court proceeding.

(g) *Effective Date.* This section is applicable on December 18, 2002.

[T.D. 9028, 67 FR 77421, Dec. 18, 2002]

#### § 301.7603-1 Service of summons.

(a) *In general*—(1) *Hand delivery or delivery to place of abode.* Except as otherwise provided in paragraph (a)(2) of this section, a summons issued under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall be served by an attested copy delivered in hand to the person to whom it is directed, or left at such person's last and usual place of abode.

(2) *Summonses issued to third-party recordkeepers.* A summons issued under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 for the production of records (or testimony about such records) by a third-party recordkeeper, as described in section 7603(b)(2) and § 301.7603-2, may also be served by certified or registered mail to the third-party recordkeeper's last known address, as defined in § 301.6212-2. If service to a third-party recordkeeper is made by certified or registered mail, the date of service is the date on which the summons is mailed.

(b) *Persons who may serve a summons.* The officers and employees of the Internal Revenue Service whom the Commissioner has designated to carry out

the authority described in § 301.7602-1(b) to issue a summons are authorized to serve a summons issued under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602.

(c) *Effect of certificate of service.* The certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons.

(d) *Sufficiency of description of summoned records.* When a summons requires the production of records, it shall be sufficient if such records are described with reasonable certainty.

(e) *Records.* For purposes of this section and § 301.7603-2, the term *records* includes books, papers, or other data.

(f) *Effective/applicability date.* This section is applicable on April 30, 2008.

[T.D. 9395, 73 FR 23344, Apr. 30, 2008]

**§ 301.7603-2 Third-party record-keepers.**

(a) *Definitions*—(1) *Accountant.* A person is an accountant under section 7603(b)(2)(F) for purposes of determining whether that person is a third-party recordkeeper if, on the date the records described in the summons were created, the person was registered, licensed, or certified as an accountant under the authority of any state, commonwealth, territory, or possession of the United States, or of the District of Columbia.

(2) *Attorney.* A person is an attorney under section 7603(b)(2)(E) for purposes of determining whether that person is a third-party recordkeeper if, on the date the records described in the summons were created, the person was registered, licensed, or certified as an attorney under the authority of any state, commonwealth, territory, or possession of the United States, or of the District of Columbia.

(3) *Credit cards*—(i) *Person extending credit through credit cards.* The term *person extending credit through the use of credit cards or similar devices* under section 7603(b)(2)(C) generally includes any person who issues a credit card. The term does not include a seller of goods or services who honors credit cards issued by other parties but who does not extend credit through the use of credit cards or similar devices.

(ii) *Devices similar to credit cards.* An object is a device similar to a credit card under section 7603(b)(2)(C) only if it is physical in nature, such as a charge plate or similar device that may be tendered to obtain an extension of credit. Thus, a person who extends credit by requiring customers to sign sales slips without requiring the use of, or reference to, a physical object issued by that person is not a third-party recordkeeper under section 7603(b)(2)(C).

(iii) *Debit cards.* A debit card is not a credit card or similar device because a debit card is not tendered to obtain an extension of credit.

(4) *Enrolled agent.* A person is an enrolled agent under section 7603(b)(2)(I) for purposes of determining whether that person is a third-party recordkeeper if the person is enrolled as an agent authorized to practice before the Internal Revenue Service pursuant to Circular 230, 31 CFR Part 10.

(5) *Owner or developer of certain computer code and data.* An owner or developer of computer software source code under section 7603(b)(2)(J) is a third-party recordkeeper when summoned to produce a computer software source code (as defined in section 7612(d)(2)), or an executable code and associated data described in section 7612(b)(1)(A)(ii), even if that person did not make or keep records of another person's business transactions or affairs.

(b) *When third-party recordkeeper status arises*—(1) *In general.* Except as provided in paragraph (a)(5) of this section, a person listed in section 7603(b)(2) is a third-party recordkeeper for purposes of section 7609(c)(2)(E) and § 301.7603-1 only if the summons served on that person seeks records (or testimony regarding such records) of a third party's business transactions or affairs and such recordkeeper made or kept the records in the capacity of a third-party recordkeeper. For instance, an accountant is not a third-party recordkeeper (by reason of being an accountant) with respect to the accountant's records of a sale of property by the accountant to another person. Similarly, a credit card issuer is not a third-party recordkeeper (by reason of being a person extending credit through the use of